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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/296,120
Filing Date: April 21, 1999
Appellant(s): REDDIN ET AL.

Daniel J. Warren
For Appellant

EXAMINER'S ANSWER

This is in response to the Appeal Brief filed on 01/11/10 appealing from the Office action mailed on 08/18/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The Examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief appears to be correct.

(4) Status of Amendments After-Final

The Appellant's statement of the status of amendments after-final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is partially correct since the prosecution history featured on pages 7-11 of the Brief should not be part of the arguments.

Art Unit: 3688

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is partially incorrect. For example, the current version of claim 1, filed on 01/30/09, does not contain the “creating demand” step.

(8) Evidence Relied Upon

5,649,114	Deaton	7/15/1997
5,974,396	Anderson	10-1999

(9).**The Rejection of claim 59 under 35 USC 101 has been withdrawn.**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(Please notice that claim 66 has been withdrawn from further consideration).

Claims 1-2, 4-19, 21-23, 25-28, 30-45 and 59-65 are rejected under 35 U.S.C.

102(b) as being anticipated by Deaton et al, US Patent 5,649,114.

As per claim 1, Deaton discloses a method comprising the steps of:

Storing (gathering or collecting) the consumer lifestyle and the consumer market data or purchase history data **in a database** (Here the market data or purchase history data contain lifestyle data, such as the type of product, certain type of a product, a particular size of a product

Art Unit: 3688

or a particular brand's name consumed by the customer, that may be directly read or inferred from the market data or purchase history data. In this instance, the market data include lifestyle data. In another instance, the lifestyle data may be inferred from the market data such that if the consumer consumes an expensive brand's name, then the consumer belongs to a certain class or demographics, has a good paying job, lives in an expensive neighborhood, owns a house, has a college degree etc.-Col. 71: 31-45; col.72: 35-59);

Storing a selection of messaging, brands, packaging or merchandising associated with the item in the database (Here, if, for example, it is determined that the customer is a frequent shopper, but does not purchase coffee (selected/promoted item), then the system is configured to generate a coupon (messaging), having imprinted thereon, among other things, associated messaging or promotional message related to the selected or promoted product, providing a large discount on coffee to the customer (type of consumer). Alternatively, the system might determine that the customer had no history of buying a specific brand of coffee (associating the selected or promoted product or item (coffee) with a specific brand) and generate incentive coupons, having associated messaging imprinted thereon (associating a messaging with the selected/promoted item or product), redeemable for that brand of coffee, wherein the generated coupons are distributed to the customer (type of consumer who does not consume that brand of coffee based on the market data). The data corresponding to the promoted or selected item (coffee), a particular brand of coffee and generated coupons, having associated messaging or promotional messaging imprinted thereon, are maintained or stored in the system database. See col. 68: 44-63; col. 71: 31-67);

Art Unit: 3688

Determining one or more representative activities of said predetermined type of consumer based upon the consumer lifestyle data **by a processor in communication with the database**, such as the customer's purchases made at various participating retailers and recorded in a database wherein the customer's purchase history, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase data, preference data, product consumption rate and so on, so that the customer can be specifically targeted based on the consumer lifestyle data or purchase data or market data as explained above (It is herein understood if a customer purchases a certain type of coffee brand, then the customer will prepare and drink the coffee while watching TV, talking to a friend on the phone, reading a newspaper, etc., (so called representative activities) and the customer's purchase is recorded such that a coupon (generating a message) can be offered to the customer on the same or a different coffee brand. Further, the customer's purchase history is analyzed to determine an estimated product use (representative uses of an item) and generate a timely coupon (timely message), associated with the product, for the customer based on the product use, which indicates when the product should be replaced, Finally, what the customer is doing or the kind of action performed by the customer (herein referred to as representative activities) while consuming an item is not a matter of patentability or should not be given any patentable weight here) (col. 71: 31-67; col. 86:65 to col. 89: 22; col. 81:56 to col. 82: 11; figs. 27-32; col. 10: 30-67);

Determining one or more representative uses **or usage or consumption (rate), using a consumption rate analysis (module)**, of said item (e.g. a coffee or a coffee brand) or a lack of it by said predetermined type of consumer, based upon the customer's purchase pattern (market data) or by tracking **by the processor in communication with the database** the customer's

Art Unit: 3688

purchase cycle of a product to anticipate when the customer's may run out of the product and need to replace the said product during said one or more representative activities (wherein the customer's purchase history indicates usage **or consumption rate** data related to a purchased product and wherein the usage data indicate when this product should be replaced and a message or a coupon, **having a message or a promotional message imprinted thereon**, associated with the product **or item**, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date (col.71: 31-67; col. 10: 30-67; **col. 119: 20-34 and col. 120: 1-11**); and

Determining an association between said one or more representative uses (consumption rate) of said item (e.g. coffee) by said predetermined type of consumer during said one or more representative activities **and** the selection of messaging (coupon), brands, packaging or merchandising **by the processor in communication with the database**, using the consumer's buying pattern (market data and/or lifestyle data) corresponding to the item or product or by tracking the customer's or consumer's purchase cycle **or consumption rate** of the product to anticipate when the customer may run out of the product and need to buy or re-order or replace the product **or to figure out whether the consumer's or customer's use or consumption of the item meets consumption criteria, using a consumption analysis module**, wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a (advertising) message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date (**col.71:31-67**; col. 10: 30-67; **col. 119: 20-34 and col. 120: 1-11**) (**Further**, if, for example, it is determined that the customer

Art Unit: 3688

is a frequent shopper, but does not purchase coffee (selected /promoted item), then the system is configured to generate a coupon (messaging), having imprinted thereon, among other things, associated messaging or promotional message related to the selected or promoted product, providing a large discount on coffee to the customer (type of consumer). Alternatively, the system might determine that the customer had no history of buying a specific brand of coffee (associating the selected or promoted product or item (coffee) with a specific brand) and generate incentive coupons, having associated messaging imprinted thereon (associating a messaging with the selected/promoted item or product), redeemable for that brand of coffee, wherein the generated coupons are distributed to the customer (type of consumer who does not consume that brand of coffee based on the market data). The data corresponding to the promoted or selected item (coffee), a particular brand of coffee and generated coupons, having associated messaging or promotional messaging imprinted thereon, are maintained or stored in the system database. See col. 68: 44-63; col. 71: 31-67);

Storing the association in the database (See col. 68: 44-63; col. 71: 31-67; **col. 119: 20-34 and col. 120: 1-11**); and

Providing access to the association (See col. 68: 44-63; col. 71: 31-67; **col. 119: 20-34 and col. 120: 1-11**).

See also **col. 118: 43 to col. 119: 3; col. 119: 13-20; col. 119: 4-20; col. 119: 21-34; col. 124: 45 to col. 125: 23; fig. 19 and related embodiment.**

Claims 44-45 implicitly recite the limitations of claim 1 and thus, claims 44-45 are rejected under a similar rationale as applied to claim 1 above.

Art Unit: 3688

As per claims 2 and 4, Deaton et al further disclose a method comprising the steps of gathering lifestyle information through the purchase history or market data of an individual consumer during a particular period of time and subsequently performing an analysis of such lifestyle information so that a personal discount coupon can be provided to the individual customer redeemable on a product that the consumer has previously indicated a tendency to buy (col. 71:31-45; figs. 29; col. 10: 30-67). Furthermore, Deaton discloses a system for determining one or more "representative activities" of a predetermined type of consumer based upon the consumer lifestyle data, such as the customer's purchases or market data made at various participating retailers and recorded in a database wherein the customer's purchase history, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase data, preference data and so on, is established so that the customer can be specifically targeted based on the consumer lifestyle data or purchase data or market data as explained above (in claim 1) (It is herein understood if a customer purchases a certain type of coffee brand, then the customer will prepare and drink the coffee while watching TV, talking to a friend on the phone, reading a newspaper, etc., (representative activities) and the customer's purchase is recorded such that a coupon (generating a message) can be offered to the customer on the same or a different coffee brand. Further, the customer's purchase history is analyzed to determine an estimated product use (representative uses of an item) and generate a timely coupon (timely message), associated with the product, for the customer based on the product use, which indicates when the product should be replaced-Col. 71: 31-67; col. 86:65 to col. 89: 22; col. 81:56 to col. 82: 11; figs. 27-32; col. 10: 30-67).

Art Unit: 3688

As per claims 5-19, 23, 25-28, 30-31, 34-37, 39 and 41-42, Deaton further discloses a method for customer promotion (advertising) wherein an identified customer using a check or credit card at a POS in a retail store during a shopping trip to pay for groceries and based on the identified customer prior shopping history, collected over a specific period of time, stored in a database associated with CVC Master Controller 965 of fig. 19, he will receive a discount coupon redeemable during a future transaction on a particular promoted or advertised product, such as a brand of coffee, for which the said customer has previously indicated a tendency to buy upon analyzing his prior shopping transaction using conventional data mining and niche marketing techniques. This customized discount coupon is intended not only to encourage the identified customer to return to the store to buy more items, but also to promote the store products in general. This discount coupon, promoting this coffee brand, can be communicated to the identified customer at the POS in the retail store in a printed form by printing a hard copy using receipt printer 969 connected to ECR of fig. 20 or the discount coupon can be electronically displayed to the customer on ECR display 968 of fig. 20 or stored in the database associated with CVC Master Controller 965 of fig. 19 or encoded on the customer's smart card 53 (col. 4:52 to col. 10: 67; col. 71: 31-45; col. 89:66 to col. 90: 34; figs. 29; col. 67:23 to col. 68: 19).

As per claims 21 and 22, it is implicitly supported in the prior art that a predetermined type of packaging will be carefully selected to package a promoted product based on some predefined parameters associated with a target market, thereby making the promoted product or item more attractive to the targeted audience. For example, it is understood that

Art Unit: 3688

Deaton's promoted coffee will be sold in a carefully selected package, as one skilled in the art would have anticipated.

As per claims 32, 33, 38 and 43, it is implicitly supported, in the current reference, that advertised products or promoted products or specials can be communicated to the customers through large posters displayed within the store or outside the store windows, through in-store kiosks, handouts, flyers, mailers (e.g. mailing coupons related to promoted products to targeted customers), newspapers, TV monitors/displays (virtual environment) located within customers' homes away from the stores, etc. (col.72: 35-48).

As per claim 40, it is anticipated in the Deaton et al system that an identifier customer may receive a discount coupon through the mail based on his purchase history criteria (col. 10: 63-67; col. 67: 23-39). It is also understood in the system of Deaton et al that a customer will originally fill out an application, where he provides customer's information, before a customer's personal check can be accepted by the retail store as payment. Further, the customer's information provided in the application can be used to profile the identified customer.

As per claim 59, Deaton teaches:

Claim 59:

receiving data or purchase data, which include lifestyle data as discussed in claim 1 above, at a POS during a current transaction corresponding to representative transaction activities of said predetermined type of consumer, who has previously indicated a tendency to buy an item based on his uses of the item (col. 71: 31-67);

Art Unit: 3688

storing said data or purchase data corresponding to said representative transaction activities of said predetermined type of consumer in marketing database or a database associated with CVC Master Controller of fig. 19;

receiving data or purchase data or market data corresponding to representative uses or consumption of said item or a certain type of coffee by said predetermined type of identified consumer, who uses a check or credit card at a POS (Anticipated step-col.71: 31-67; **col. 119: 20-34 and col. 120: 1-11; fig. 19 and related embodiment**);

storing said data or purchase data corresponding to said representative uses or consumption of said item or a certain type of coffee by said predetermined type of consumer in said marketing database or a database associated with CVC Master Controller of fig. 19, which holds consumer's purchase history (Anticipated step-col.71:31-67; **fig. 19 and related embodiment**);

Receiving a selection of messaging, brands, packaging or merchandising associated with the item (Here, if, for example, it is determined that the customer is a frequent shopper, but does not purchase **coffee (selected/promoted item)**, then the system is configured to generate a coupon (messaging), having imprinted thereon, among other things, associated messaging or promotional message related to the selected or promoted product, providing a large discount on **coffee** to the customer (type of consumer). Alternatively, the system might determine that the customer had no history of buying a specific **brand of coffee (associating the selected or promoted product or item (coffee) with a specific brand)** and generate incentive coupons, having associated messaging imprinted thereon (associating a messaging with the selected/promoted

Art Unit: 3688

item or product), redeemable for that brand of coffee, wherein the generated coupons are distributed to the customer (type of consumer who does not consume that brand of coffee based on the market data). The data corresponding to the promoted or selected item (coffee), a particular brand of coffee and generated coupons, having associated messaging or promotional messaging imprinted thereon, are maintained or stored in the system database. See col. 68: 44-63; col. 71: 31-67);

Storing the selection of messaging, brands, packaging or merchandising associated with the item in said marketing database (Here, if, for example, it is determined that the customer is a frequent shopper, but does not purchase coffee (selected /promoted item), then the system is configured to generate a coupon (messaging), having imprinted thereon, among other things, associated messaging or promotional message related to the selected or promoted product, providing a large discount on coffee to the customer (type of consumer). Alternatively, the system might determine that the customer had no history of buying a specific brand of coffee (associating the selected or promoted product or item (coffee) with a specific brand) and generate incentive coupons, having associated messaging imprinted thereon (associating a messaging with the selected/promoted item or product), redeemable for that brand of coffee, wherein the generated coupons are distributed to the customer (type of consumer who does not consume that brand of coffee based on the market data). The data corresponding to the promoted or selected item (coffee), a particular brand of coffee and generated coupons, having associated messaging or promotional messaging imprinted thereon, are maintained or stored in the system database. See col. 68: 44-63; col. 71: 31-67);

determining a relationship or correlation between said data corresponding to said representative transaction activities of said predetermined type of consumer and said data corresponding to said representative uses or consumption of said item (**e.g. coffee**) or a certain type of coffee by said predetermined type of consumer activities with, using a consumption analysis module, who uses a check or credit card at a POS (Anticipated step-col.71:31-67), upon analyzing using conventional data mining and/or niche marketing techniques, the identified shopper's or predetermined type of consumer's prior shopping transaction during a series of preset number of weeks and subsequently, providing a discount coupon to the identified shopper or customer redeemable on the identified item, thereby making the coupon program more effective (through the selection of messaging (coupon), brands, packaging or merchandising); and **storing said relationship or correlation in said marketing database or a database associated with CVC Master Controller of fig. 19, which holds consumer's purchase history (Anticipated step-col.71: 31-67).**

See also col. 118: 43 to col. 119: 3; col. 119: 13-20; col. 119: 4-20; col. 119: 21-34; col. 124: 45 to col. 125: 23.

As per claims 60-62 and 65, it is anticipated in the system of Deaton that, upon analyzing, using conventional data mining and/or niche marketing techniques, an identified shopper's prior shopping transaction during a series of preset number of weeks and subsequently, upon meeting at least one predetermined criterion by the shopper, a discount coupon redeemable on an identified item (or a certain type of coffee) continuously used by the customer will be provided to the customer or shopper during a transaction at a POS, thereby making the coupon program distribution more effective (col. 71:31-45). Moreover, it is understood that a message

Art Unit: 3688

regarding the said discount coupon will be communicated to the identified customer at the POS by printing the message (coupon data) using receipt printer 969 of fig. 20 or by encoding the message on the customer's smart card 53. Regardless of the medium used, a copy of the message, which authorizes the identified customer to redeem the discount coupon, will be electronically stored in a database or marketing database of CVC Master Controller 965 of fig. 19 for verification. Finally, the redemption data regarding the discount coupon on the identified item will be stored in the database for further processing so that the effectiveness (conversion rate) of the discount coupon distribution program can be measured, as anticipated by Deaton et al (col. 71: 31-45; col. 4:52 to col. 7: 54).

As per claims 63 and 64, it is anticipated in the Deaton's system for customer promotion that a store will compute the average transaction amount or selling price of an item, such as a brand of coffee, on which a discount coupon is given to an identified customer or shopper based upon his prior shopping transaction, thereby determining the average gross profit margin for said item.

Claims 1 and 59 are rejected under 35 USC 102(e) as being anticipated by Anderson, US Patent 5, 974, 396.

As per claims 1 and 59 and, Anderson discloses a method of and a system for gathering and analyzing customer and purchasing information, wherein the system permits a retailer or retail chain to process transactional information involving large numbers of consumers and consumer products. Product information is gathered that uniquely identifies a specific

Art Unit: 3688

product by type and manufacturer and grouped into generic product clusters. Consumers are similarly grouped into consumer clusters based on common consumer demographics and other characteristics (lifestyle). Consumer retail transactions (market data) are analyzed in terms of product and/or consumer clusters to determine relationships between the consumers and the products. Product, consumer, and transactional data are maintained in a relational database. Targeting of specific consumers with marketing and other promotional literature (messaging) is based on consumer buying habits (market), needs, demographics (lifestyle), etc. A retailer queries the database using selected criteria, accumulates data from the database in response to that query, and makes prudent business and marketing decisions based on that response. Queried information from the database may be communicated to a printing subsystem for printing promotional literature (messaging) directed to one or more particular customers based on information stored in the database. The present system includes, inter alia, a printing subsystem connected to an analyzing means for printing promotional literature (messaging) directed to particular consumers based on cluster information stored in the relational database. In one embodiment, the printing subsystem generates and directs relevant promotional literature to certain consumers using names and address lists from the relational database. Promotional literature may include, for example, advertisements, newsletters, and coupons. With **the printing subsystem, customized promotional information (messaging) most relevant and most likely to be of interest to a particular consumer, based on his buying behaviors (market data) and demographics (lifestyle), is included in targeted promotional literature mailed to that consumer.** See abstract; figs. 1-13; Col. 2:24 to Col. 4: 60.

Please consider the entire reference.

(10) Response to Argument

First of all, the Board is herein being asked to ignore the prosecution history, as featured on pages 7-11 of the Brief, since it is not part of the arguments, which begin on page 12 with the 35 USC 101 Rejection of claim 59 (Bilski 101 rejection), **which has been withdrawn, as seen above, in view of the Appellant's remarks. Thus, the Appellant's arguments regarding the 101 rejection of claim 59 are herein being moot.**

Second of all, upon reviewing the Application and the appended claims, it is rather unclear what the Appellant is seeking exclusive patent rights for. In fact, the limitations recited in the claims represent the type of disclosure often found in marketing text books (see enclosed pages), but not in a patent application claims. The metes and bounds of the claims or at least the independent claims are not defined so as to enable one having ordinary skills in the art to understand the subject matter recited therein. And the claims were examined based on what the Examiner can decipher therefrom.

In general, the Appellant argues that Deaton does not show, except for the gathering consumer marketing data, storing the "Consumer Lifestyle Data", determining "Representative Activities" of a predetermined type of consumer, "Representative Uses" of the item by the consumer during the activities and "Creating Demand" for the item by the consumer and the Appellant proceeds by defining "Consumer Lifestyle Data", "Representative Activities", "Representative Uses" and "Creating Demand". Further, the Appellant submits that the fundamental flaw in the rejection is that the customer scan data relied upon in Deaton is not the

Art Unit: 3688

same consumer's activities and use data described in the claims. In response, the Examiner completely and respectfully disagrees with the Appellant's findings. Indeed, the claims are herein given a broad and reasonable interpretation, as featured in the rejection of claim 1, and the consumer's data, such as market data, preference data, and demographic data and so on, read on the "Consumer Lifestyle Data", "Representative Activities" and "Representative Uses" as seen in the Office Action. **The Board is being encouraged to take a look at the specification for a better understanding of the claims, wherein the invention can be summarized in one example, i.e. a consumer drinking a diet coke at 3:00 o'clock in the afternoon while walking down the street or while shopping at a POS. Moreover, the specific definitions of those terms or phrases ("Consumer Lifestyle Data", "Representative Activities" and "Representative Uses", etc.) as featured in the Brief, on pages 14-16, are not read into the claims, which are broadly interpreted or considered for what they actually disclose, but not for what the Appellant intends to recite therein (See Office Action).** Here, although the claims are interpreted in light of the specification, nevertheless, specific limitations from the specification are not directly read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993).

However, having said that, the Examiner does indeed address in the Office Action, as humanly possible, those terms/phrases or limitations with respect to the references (e.g. the Deaton's Patent). **Although**, for instance, with respect to **"Creating Demand"** and contrary to the Appellant's remarks, Deaton teaches using the consumer's buying pattern (market data and/or lifestyle data, which are in a database or storage medium for further marketing analysis) corresponding to the item or product or by tracking the customer's or consumer's purchase

Art Unit: 3688

cycle of the product (or the use of the product) to anticipate when the customer may run out of the product, for example, and need to buy or re-order or replace the product, wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a (advertising) message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date and wherein the coupon having imprinted thereon promotional message or text, related to the product or item, is printed for the customer at the POS or mailed to the targeted consumer (particular type of consumer) (col.71: 31-67; col. 10: 30-67), **however, the currently pending version of the claims or more particularly claim 1, filed on 01/30/09, no longer recites the "Creating Demand" step, which was deleted during a claim amendment. Hence, Appellant's arguments are partially based on limitation (i.e. "Creating Demand"), which is not being claimed. Here, although the claims are interpreted in light of the specification, however, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).**

Further, contrary to the Appellant's position, the Office Action does address the consumer lifestyle information, which can be obtained using different methods including inferring the lifestyle data from market data or purchase history data as featured in the rejection. The Appellant has failed to feature here what he considers to be "consumer lifestyle data" and how it differs from the one described in the Office Action, which is supported in the art as an ordinary skilled artisan would have concluded. In fact, the specification merely describes, on page 2 and lines 13-15, that a purchase triggering maybe based upon the vast amounts of

Art Unit: 3688

consumer **marketing and lifestyle data that is routinely collected on modern consumers.**

Moreover, the specification, on page 11 and lines 30-34, discloses that the consumer lifestyle information is similar to the extensive demographic and socio-economic consumer information. As best understood here, it appears that market data and lifestyle data form a single entity and may, at times, be used interchangeably. Here, inferring the lifestyle data from the market data is not deemed improper since the manner in which the lifestyle data were obtained or the source of the lifestyle data does not immediately affect the functionality of the present system. **Additionally, Deaton teaches using a consumer's zip code and marital status information in demographic (lifestyle) analysis. In short, Deaton teaches using a consumer's purchase history data (market data) and demographic (lifestyle) data to offer a particular item to the consumer (creating demand).** See col. 34: 55-67; col. 61: 59 to col. 62:56.

In summary, with respect to at least claim 1 and as seen on page 17 of the Brief, Appellant respectfully submits that neither the Examiner nor the Board can assert that Deaton discloses the elements claimed in claim 1. In short, Appellant contends that Deaton does not anticipate the “creating demand” limitation. In reply, contrary to the Appellant's conclusion, not only does the Examiner show that Deaton supports the “creating demand” step as featured above, but also claim 1 no longer recites the argued limitation or the “creating demand” act. In other words, Appellant's arguments, as herein presented, are based on a limitation, which is not being claimed. **Here, although the claims are interpreted in light of the specification, however, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).**

Art Unit: 3688

Additionally, regarding claims 5-8, 9-11, 14, 15, 21-23, 25-28, 30-35, 36-43, 44 and 45, Appellant submits that Deaton does not teach the limitations related to those claims and that the claims are patentable over Deaton. In response, the Examiner completely and respectfully disagrees with the Appellant's statements. In fact, as seen in the Office Action, Deaton does implicitly or explicitly support the limitations related to the above claims.

Moreover, regarding claims 59-65, Appellant contends that Deaton only tracks consumer sales history data and is not interested in any type of relationship between the activities of a consumer and how a consumer uses an item during that activity. Likewise, there is no determination of a conversion rate or a profit margin described in the reference. First, although the Examiner addresses the claims separately, especially the independent claims, however, the Appellants decides to lump the claims (i.e. claims 59-65) together and traverses the rejections in a like manner. The latter makes it more difficult to respond to the Appellant's remarks. For example, while dependent claim 62 mentions a conversation rate, however, independent claim 59 does not recite "determining a conversion rate or a profit". Second, contrary to the Appellant's findings, Deaton is interested in a relationship or correlation between the activities of a consumer and how the consumer uses an item during that activity as seen in the rejection of claim 59. Further, redemption data regarding discount coupons (messaging, merchandizing), associated with one or more identified items, and redeemed by identified consumers are collected and stored in a database for further processing or market analysis **so that the effectiveness (conversion rate) of the discount coupon distribution program can be measured, as anticipated by Deaton (col. 71: 31-45; col. 4: 52 to col. 7: 54)**. Moreover, Deaton teaches providing one or more discount coupons (messaging), having a specific value, related to one or

Art Unit: 3688

more items to an identified customer, such as an infrequent customer, to thereby induce the customer to shop more at a local store, in his geographical location, and spend more money (converting the customer from an infrequent customer to a frequent customer) and monitoring whether the customer has redeemed the one or more discount coupons. If the customer fails to take a favorable action or redeem the coupons, then the system is configured to provide one or more coupons, having a more substantial coupon value, to the customer (col. 70: 56 to col. 71: 17; figs. 27-32).

All in all, the Examiner wants to remind the Appellant that features that are inherent in the art or widely used in the industry need not be disclosed in a reference in order for these features to be anticipated by the current prior art; in other words, failure of those skilled in the art to contemporaneously recognize an inherent property, function or ingredient of a prior art does not preclude a finding of anticipation (MPEP 2131.01 (III)).

Third of all, regarding the rejections of claims 1 and 59 as anticipated by Anderson, the Appellant argues that the “lifestyle information” featured by Anderson and referred to as demographic information is not the same as the “consumer lifestyle data” recited in the claims. In response, the Examiner submits that the Appellant has failed to describe here what he considers to be “consumer lifestyle data” and how it differs from the one described in the Office Action, which is supported in the art as an ordinary skilled artisan would have concluded. In fact, the specification merely describes, on page 2 and lines 13-15, that a purchase triggering maybe based upon the vast amounts of consumer **marketing and lifestyle data that is routinely collected on modern consumers. Moreover, the specification, on page 11 and lines 30-34,**

Art Unit: 3688

discloses that the consumer lifestyle information is similar to the extensive demographic and socio-economic consumer information. As best understood, the specification of the present Application considers lifestyle data to be similar to demographic data and so does Anderson. Further, the manner in which the lifestyle data were obtained or the source of the lifestyle data does not immediately affect the functionality of the present system. Thus, Anderson does indeed anticipate the claim limitations.

Therefore, the Appellant's request for allowance or withdrawal of the last Office Action has been fully considered and respectfully denied in view of the foregoing response since the Appellant's arguments as herein presented are not convincing and thus, the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

04/08/10

/JDJ/

Application/Control Number: 09/296,120

Page 23

Art Unit: 3688

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Application/Control Number: 09/296,120
Art Unit: 3688

Page 24

Application/Control Number: 09/296,120
Art Unit: 3688

Page 25